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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,498	06/26/2003	Clifford D. Bennett	DBZ / 467P2	5227
26875	7590	11/17/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/606,498	BENNETT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phi D. A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4-13,16,17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-13,16,17,19-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/13/05 has been entered.

1. **PRODUCT BY PROCESS CLAIM:**

“The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

*The limitation of “injection molded” is a product by process limitation and thus treated according to the office policy set forth above.*

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new limitation of “inner surface” is confusing. It is unclear how a surface can extend “inwardly” from an inner surface. The claim is thus indefinite.

*Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, 8, 10-13, 16, 17, 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haslem et al (6089522).

Haslem et al (figure 5) shows a chair comprising a body including an upper receiving area and a lower base, the receiving area including at least two pairs of notches (the notches at top, the pairs are perpendicular to each other), the two pairs of diametrically opposed notches having different depths (the chair showing notches with different depths), the chair being adapted to support reinforcement members at different heights and in perpendicular relationship to one another, the base adapted to rest on a planar support surface, the body having an inner surface and an outer surface, the surfaces being substantially complementary to each other to allow a plurality of chairs to be stacked within one another for storage and shipment (inherently so per the tapering of the body of the structures), a plurality of ribs(24) on the outer surface and extending outwardly from an outer profile of the body to facilitate separating individual chairs from a stack (inherently capable of doing so), each rib extending in a direction from the lower base (26) toward the upper receiving area (100) and having a length that spans only a portion of the outer surface, the base including a plurality of support legs extending downwardly from the receiving area and defining a plurality of apertures (the apertures formed by legs 102, 40, 34), the apertures operable to allow poured concrete to pass fluidly through the body, the base including four support legs (34, 32), two of the support legs further including foot members (66) extending horizontally outwardly therefrom, the foot extending diagonally opposite support legs, the support legs include a thickened band of material around the apertures, the base including

upper and lower support legs, the upper support legs extending downwardly from the receiving area and defining upper apertures, the lower support legs extending downwardly from the upper support legs and defining lower apertures, the lower support legs being longer than the upper support legs, the lower support legs include a thickened band of material (36) around the lower apertures, the apertures are arch-shaped, the chair is made of polypropylene (col 8 line 6), the body being generally funnel shaped with the lower opening being larger than the receiving area, the inner and outer surfaces being substantially complementary to each other, the first pair of notches being deeper than the second pair of notches.

Haslem et al does not disclose the hollow body being a unitary, integrally formed including an upper receiving area and a lower base.

Haslem et al further discloses that a body made be made as a unitary, single component, or the body may be constructed from various components which are fastened together by any known means.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Haslem et al's structure to show the hollow body being a unitary, integrally formed including an upper receiving area and a lower base because it would have been obvious to one having ordinary skill in the art to make a structure from multiple pieces into a single or vice versa as taught by Haslem et al, and it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art, *Howard v. Detroit Stove Works*, 150 US 164 (1893).

3. Claims 4, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haslem et al in view of Sotelo et al (6732484).

Haslem et al as modified shows all the claimed limitations except for the notches being connected by bridges, the bridges connecting the troughs of the notches.

Sotelo et al shows bridges (34, 32) connecting notches (42, 40) at the troughs thereof to reinforce the structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Haslem et al's modified structure to show the notches being connected by bridges, the bridges connecting the troughs of the notches because it would reinforce the notches against the weights of the rebars as taught by Sotelo et al.

4. Claims 6-7, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haslem et al.

Haslem et al as modified shows all the claimed limitations except for the remaining legs lacking a foot member.

Haslem et al further discloses that the body may be without the feet (col 7 line 28).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Haslem et al's modified structure to show the remaining legs lacking a foot member because having the remaining legs lacking a foot member would enable the legs to support the body at a tight location where there is insufficient space for the foot, and a designer of ordinary skill in the art would find such a change obvious to compensate for different location requirements.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haslem et al in view of Hartzheim (5729949).

Haslem et al as modified shows all the claimed limitations except for notches having bearing surfaces extending inwardly from the outer surface of the support body.

Hartzheim discloses notches having bearing surfaces extending inwardly from the outer surface of the support body and that such configurations would allow the chair to support a greater weight than if the radius of curvature of the legs are the same as the central opening.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Haslem et al's modified structure to show the notches having bearing surfaces extending inwardly from the outer surface of the support body because such a configuration would enable the notches and chair body to support a greater weight than if the radius of curvature of the legs are the same as the central opening.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 4-13, 16, 17, 19-24 have been considered but are moot in view of the new ground(s) of rejection.

Applicant states that Haslem does not show the ribs extending in a direction from the lower base toward the upper receiving area and having a length that spans only a portion of the outer surface, examiner respectfully disagrees. As set forth above, the reference shows the ribs as claimed. The argument is thus moot.

With respect to applicant's argument to "unitary integrally formed body...notches", examiner respectfully points out that the reference as modified shows all the claimed limitations.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A

11/14/05